IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6198 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MAHIPATRAI A MEHTA

Appearance:

MR PRANAV G DESAI for the Petitioner.

NOTICE SERVED for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/12/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner has challenged the order dated 9th August, 1989, passed by the Presiding Judge, Labour Court, Bhavnagar in New Reference (LCB) No.572 of 1988. By the impugned Award, the Labour Court has passed an order in favour of the

concerned workman, reinstating him in service, without any back wages for the intervening period.

2. The respondent herein was serving as a Conductor at the Bhavnagar Depot of the S.T. Corporation. At the relevant time, he had put in about 12 years of service. On the relevant day, i.e. on 27.11.1986, he was on duty in the bus and the bus was checked by the Officers of the S.T. Corporation and at that time, it was found that five people of one group were not given tickets, though Rs.5/- was collected from them. The petitioner was subjected to departmental enquiry and, ultimately, by order dated 27.2.1988, he was removed from service. The aforesaid dismissal, ultimately resulted in the Industrial Dispute and the dispute was referred to the Labour Court, Bhavnagar, for adjudication.

3. The case of the workman before the Labour Court was that he was not given proper opportunity to defend his case in the enquiry proceedings. It is his case that after collecting Rs.5/- from the passengers, he had paid back Rs.1.25 and even though, he had collected the fare, which was also shown in the cash box, he had not issued tickets to such passengers. After considering the evidence on record, the Labour Court came to the conclusion that it is a case of non-issuance of tickets and not a case of misappropriating any amount.

4. On behalf of the Corporation, it was argued before the Labour Court that the past record of the concerned workman was not satisfactory and he was subjected to fine on eight occasions, and penalty of withholding of increments for 12 times. The Labour Court, of course, has also taken into consideration irrelevant facts while deciding the matter, such as, trifle nature of the amount involved, etc. The Labour Court, however, found that the petitioner was not given opportunity of cross-examining the reporter and the Labour Court has found that in view of the evidence of the Reporter, the concerned workman had issued 28 tickets and the Labour Court accordingly found that the respondent had issued tickets to all passengers. But, the passengers could not show the tickets which were issued to them by the respondent-workman. The said finding of fact is recorded by the Labour Court in paragraph 9 of the Award. The Labour Court has found that the principles of natural justice were not observed during the enquiry proceedings. Considering the aforesaid aspect, the Labour Court has interfered with the penalty order by passing reinstatement without back wages.

5. After going through the Award of the Labour Court, especially the reasoning in paragraph 9 of the Award, as well as considering the fact that at the time of admitting the matter, this Court has not passed any order of interim relief, by which it should be presumed that the respondent might have been reinstated in service by the S.T. Corporation, in my view, even though the reasoning of the Labour Court is not satisfactory, this Court would not like to disturb the order of the Labour Court of reinstating the respondent-workman. However, considering the nature of misconduct, as well as past record of the workman, in my view, the concerned workman should not be allowed to go scot-free without any penalty. Therefore, while confirming the order of the Labour Court, regarding reinstatement, the concerned workman shall be subjected to the penalty of withholding of three increments with future effect. It would be open for the S.T. Corporation to transfer the concerned workman to any other post so that he may not indulge in such type of activity if he is allowed to work as Conductor, again.

6. The order of the Labour Court is accordingly modified to the aforesaid extent. Rule is made absolute accordingly, with no order as to costs.

11th December, 2003 (P.B. Majmudar, J.)

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(apj)